

REMARKS

I. STATUS OF THE CLAIMS

The independent claims are amended herein. Support for the amended claims, can be found on pages 4 – 7 of the specification. Therefore, claims 1-17 are pending and under consideration.

No new matter has been added. Approval and entry are respectfully requested.

II. EXAMINER INTERVIEW

Appreciation is expressed for the Examiner Interview granted by the Examiner on August 10, 2006. During the interview, claims 1 and 6 were discussed. The Examiner conceded Brewer et al. (Brewer, U.S. 6,148,332) does not disclose a payback system for making payback to a product user or a middleman, and a calculation means for calculating a payback value or payback values to one or both of the product user and the middleman, as recited, for example, in claim 1. However, the Examiner argues "Official Notice" in view of America Online (AOL.com) overcomes the deficiencies of Brewer.

The Examiner suggested that Applicants focus their efforts on the storage means for storing the **use results** of the services received based on the use of the product by the product user. The Examiner also suggested Applicants change the title of the invention to the following: "Method And System For Providing A Payback To A User And A Distributor Based On Product Use."

Additional points discussed during the interview are included below.

III. SPECIFICATION

The Title is amended herein in to overcome the Examiner's Objection and in accordance with Examiner's suggestion during the Examiner Interview on August 10, 2006. Therefore, it respectfully submitted, the rejection is overcome.

IV. INFORMATION DISCLOSURE STATEMENT

In the Office Action the Examiner states the Japanese references listed in the IDS filed

April 24, 2006 where not considered because English translated copies were not provided. (see page 8 of the Office Action). Therefore, a new IDS is submitted herewith, with accompanying English language abstracts of the documents "NIKKEI COMMUNICATIONS, No. 1995.1.2, (Japan), Kabushiki Kaisha Nikkei BP, (02.01.95), pages 64-69," and "NIKKEI Windows NT, No. 21, (Japan), Kabushiki Kaisha Nikkei BP, (12.98) Pages 34-37." The Japanese Patent Office cited these documents in a search report during examination of International Application Serial No. PCT/JP00/00012, from which this application entered the U.S. national stage.

Furthermore, English language abstracts of Japanese patent numbers JP 10-105626, JP 9-503322, and JP 6-295390 are submitted herewith in the IDS as well. Furthermore, JP 9-503322 is corresponds to WO95/08231 and PCT 95-08231 (an English language copy of which, is provided along with the IDS).

It is respectfully requested that at least the English language documents be considered.

V. GENERAL COMMENTS

The Examiner proposes to treat the term "information-processing product" as a "client – software." The Applicant believes the Examiner's interpretation of the term "information-processing product" is too narrow. As recited in the specification, information-processing products may include, for example, network services, personal computers, portable telephones, personal digital assistants (PDAs), hardware products, software, and software products. (see page 1, lines 12 –18 of the specification).

VI. CLAIM OBJECTIONS

Claim 1 is amended herein to further clarify the invention. Therefore, it is respectfully submitted, the objection is overcome.

VII. CLAIMS 1 – 16 ARE REJECTED UNDER 35 U.S.C. 103(a) AS BEING UNPATENTABLE OVER BREWER (U.S. 6,148,332).

Claims 1-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brewer et al. (hereinafter "Brewer"). The independent claims are amended herein to further clarify the invention. Support for the amended claims can be found on pages 4 –7 of the specification.

Reconsideration is earnestly solicited.

For example, amended Claim 4 recites **recording a use of services received from a product by the customer and storing use results of the recorded service received by the customer and determining, based on the stored recorded use results, a payback value or payback values of the product to both the customer and the middleman.**

Brewer neither teaches nor suggests **determining, based on the stored recorded use results, a payback value or payback values of the product to both the customer and the middleman** as recited in amended claim 4. Brewer, rather, describes, "a client software component for a personal computer (PC) interacts with a server of an Internet Service Provider (ISP) to require messages, such as advertisements, to be displayed in a particular manner on a display screen of the PC for interaction with a user and reporting user activity." (see Abstract of Brewer). Therefore, Brewer is simply concerned with generating revenue from displaying advertisements on a customer's computer screen.

The Examiner concedes Brewer does not expressly disclose storing a distributor's name distributing an identified product and calculating or paying by the Internet Service Provider a fee to the distributor or participating retailer or third party for distributing the identified client-software or access program or product to the user, based on the user's information identifying the user and the unique product. (see page 13 of the Office Action).

Therefore, the Examiner asserts the method of compensating the distributor for distributing the software to the user at a point of sale station is well known and cites AOL.com as an example. (see pages 13 and 14 of the Office Action). The Examiner asserts the "AOL.com server is configured to identify the unique diskettes or products distributed by a specific distributor and calculate a compensation due to the **distributor** for distributing the diskettes or CDs, having the access program or Internet software encode thereon, based on the business agreement." (see pages 14 and 15 of the Office Action). However, neither AOL.com nor Brewer teaches **determining, based on the stored recorded use results, a payback value or payback values of the product to both the customer and the middleman** as recited in amended claim 4.

The Examiner's statement regarding AOL.com, at best, only refers to the *middleman*, stating AOL.com calculates compensation due to the distributor for distributing the diskettes or CDs. However, the Examiner offers no evidence or authority for this statement. Therefore, the Applicant respectfully traverses the Examiner's statement and requests that the Examiner produce authority for the statement. The Applicant specifically points out the following errors in the Examiner's action.

First, the Examiner uses common knowledge as the principal evidence for the rejection. As explained in M.P.E.P. § 2144.03(E):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the feature is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this feature is unique to the present invention. See M.P.E.P. § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion. See M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

Although the above comments are specifically directed to claim 4, for example, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims (*i.e.* Claims 1-3, 5-16) over the cited reference.

VIII. NEW CLAIM 17

New claim 17 is added herein and recites a *calculation means for calculating a payback value or payback values to a customer and a middleman based on the stored information about the customer's use of the product*. These features are not taught by any of the cited references. Therefore, it is respectfully submitted, that claim 17 is allowable.

IX. CONCLUSION

Reconsideration and allowance of the above-referenced application are respectfully requested.

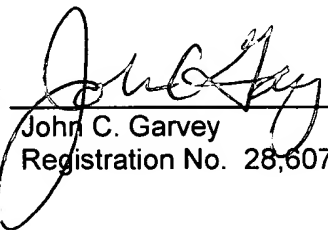
In view of the foregoing amendments and remarks, it is respectfully submitted that each of the claims patentably distinguishes over the prior art, and therefore defines allowable subject matter. A prompt and favorable reconsideration of the rejection along with an indication of allowability of all pending claims are therefore respectfully requested.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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